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VIA ELECTRONIC FILING

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TWB-204
Washington, DC 20554

Re: Ex parte, CC Docket No. 01-337, Review of Regulatory Requirements for
Incumbent LEC Broadband Telecommunications Services

On Thursday, May 8, 2003, David Lawson of Sidley, Austin Brown & Wood and the undersigned met with Brent Olson, Michael Carowitz, William Kehoe, Kimberly Cook and Ben Childers of the Wireline Competition Bureau's Competition Policy Division. The purpose of the meeting was to discuss a Commission finding of incumbent LEC dominance or nondominance in the Large Business market for broadband services. Attached is an outline that was distributed at the meeting.

As we emphasize in the outline, ILECs have market power over the bottleneck inputs necessary to provide broadband services to large business customers and they have used this power to prevent the development of effective competition for the provision of retail broadband services to large business customers in markets they have long been allowed to serve (i.e., intraLATA markets). The bottleneck input at issue here is special access. The ILECs special access dominance cannot be ignored in assessing the claims of non-dominance for the large business services that are within the scope of this proceeding because it is the direct source of their dominance over retail markets.

One electronic copy of this Notice is being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

ATTACHMENT

cc: B. Olson
M. Carowitz
B. Childers
K. Cook
W. Kehoe

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Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services

Large Business Services

- ❖ The dominance/nondominance test has always rested upon a determination of the risk of market power abuse.
- ❖ How do you determine whether ILECs have market power in the frame relay and ATM markets?
 - ILECs ask the Commission to use national market share figures
 - When you do that, they claim they have only a small share of the market
- ❖ This approach ignores a fundamental tenet of market share analysis – it is only meaningful if conducted within a relevant market.
 - There is no question the relevant markets here are point-to-point or multipoint
 - A customer can only obtain service from companies that provide service in the areas the company wants connected
 - It is clear that competitive conditions are not uniform and that market power therefore can not be analyzed on a national basis

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Large Business Services

- ❖ Once you recognize that, it is clear that in areas where the ILECs have long been allowed to participate they have very high market shares – 90% or more, those are the only meaningful market share figures in the record.
- ❖ Bottom line on market share-based analysis: even if you thought you could end your analysis with market shares, there is no basis for an across-the-board finding that ILECs lack market power.
- ❖ But here we also have more direct evidence of market power, there is the presence of control over bottleneck inputs.

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Large Business Services

- ❖ Of course, the bottleneck input at issue here is special access.
- ❖ There can be no serious question that it is a bottleneck – at least in most areas.
 - The record in the Special Access proceeding overwhelmingly demonstrates that the vast majority of buildings, and outside of the most urban areas virtually all buildings, are served only by the ILEC
 - In 1999, the Commission made a predictive judgment that this would change over time and has since deregulated the rates of most special access services
 - It now is clear that the predictive judgment was incorrect
 - . There are few, if any, alternatives to the ILECs
 - . Grants of pricing flexibility have been met with price increases instead of the price decreases the Commission thought would be needed if the ILECs were to compete with alternative suppliers